



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: MAY 09, 2023

IN THE MATTER OF:

Appeal Board No. 628442

PRESENT: GERALDINE A. REILLY, MEMBER

The Department of Labor issued the initial determination, holding the claimant eligible to receive benefits, effective June 27, 2022. The employer requested a hearing and objected contending that the claimant, a professional employee of an educational institution, should be held ineligible to receive benefits, effective June 27, 2022, between two successive academic terms because the claimant had reasonable assurance of performing services at the educational institution in the next academic term pursuant to Labor Law § 590 (10).

The Administrative Law Judge held telephone conference hearings at which testimony was taken. There were appearances by the claimant and on behalf of the employer. By decision filed February 27, 2023 (), the Administrative Law Judge granted the employer's application to reopen 022-23387, sustained, effective June 27, 2022, the employer's objection and overruled the initial determination.

We have reviewed the entire record and have considered the testimony and other evidence. It appears that no errors of fact or law have been made regarding the employer's application to reopen 02223387. The findings of fact and the opinion of the Administrative Law Judge, insofar as they concern the issue of the employer's reopening, are fully supported by the record and, therefore, are adopted as the findings of fact and the opinion of the Board.

Our review of the record, however, reveals that the case should be remanded to hold a further hearing concerning the determination of reasonable assurance. On appeal, the claimant has indicated that he did not appear at the February 23, 2023, hearing because he was not telephoned at the appointed time to

participate in the hearing. In the interests of justice, the Board has determined to provide the claimant another opportunity to appear and testify in this matter.

At the further hearing, the parties will offer additional testimony as to whether the claimant had reasonable assurance of performing services at the educational institution in the next academic term pursuant to Labor Law § 590

(10).

In furtherance of such testimony, the parties will testify to the number of days that the claimant worked in the 2021-2022 school year, his earnings in the 2021-2022 school year, how he obtained the assignments which he worked, the number of assignments that he was offered in the 2021-2022 school year and the methods by which those assignments were offered for the 2021-2022 school year. In furtherance of such testimony, the parties will be confronted with the employer's "Reasonable Assurance Data for SY 2021-2022," with the "Breakdown of Days Offered," offer comment thereon, and the document will be entered into the record after an opportunity for objection. The employer's witness will then be asked to explain any perceived discrepancies between the Sub-Central Detail Report, previously entered as Hearing Exhibit 5, the "Reasonable Assurance Data for SY 2021-2022" and the employer's witness' testimony offered at the January 19, 2023, hearing as to the number of assignments offered to the claimant, and whether the assignments were recorded in the Sub-Central Registry. Any documentary evidence relevant to such testimony shall be produced at hearing for entrance into the record after objection thereto.

The claimant will then be afforded the additional opportunity to cross-examine the employer's witness, Edward Clinton, on the testimony offered at the February 23, 2023, hearing and any additional testimony he may wish to offer.

The Judge will then take all additional testimony and evidence necessary to complete the record.

DECISION: The decision of the Administrative Law Judge, insofar as it granted the employer's application to reopen 022-23387, is affirmed.

The decision of the Administrative Law Judge, insofar as it overruled the initial determination of eligibility and sustained the employer's objection

that the claimant, a professional employee of an educational institution, should be held ineligible to receive benefits, effective June 27, 2022, between two successive academic terms because the claimant had reasonable assurance of performing services at the educational institution in the next academic term pursuant to Labor Law § 590 (10), is rescinded.

Now, based on the foregoing, it is

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issues of eligibility and the employer's objection based upon reasonable assurance, only, upon due notice to all parties and their representatives; and it is further

ORDERED, that the Notice of Hearing shall identify as the Purpose of Hearing the remanded issues of eligibility and the employer's objection based upon reasonable assurance, only; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and so that at the end of the hearing all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, on the remanded issues only, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

GERALDINE A. REILLY, MEMBER